

**RULES
OF
TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY**

**CHAPTER 0720-8
CONDUCT OF BUSINESS**

TABLE OF CONTENTS

0720—8—01	Communications
0720—8—02	Conflicts of Interest
0720—8—03	Staff and Agency Determinations
0720—8—04	Access to Agency Records
0720—8—05	Conducting Agency Meetings
0720—8—06	Beginning of Review Cycles

0720—8—01 COMMUNICATIONS.

- (1) All documents, information, and written communications which are required to be filed with the Tennessee Health Services and Development Agency (hereinafter the "Agency") must be received at The Agency's business office located in Nashville, Tennessee, during normal business hours.
- (2) The filing date of any document shall be the actual date of receipt in The Agency office. In the event the last appropriate filing date falls on a Saturday, Sunday, or legal holiday, such filing must occur on the business day immediately preceding.
- (3) Such documents, information, and written communications shall not be sent by facsimile transmission. Any such documents, information, and written communications which are received by facsimile transmission will not be considered as having been "filed" with The Agency.

Authority: T.C.A §§ 4—5—202; 68—11—1605; 68—11—1607.

0720—8—02 CONFLICT OF INTEREST.

- (1) Definitions
 - (a) "Conflict of interest" means any matter before The Agency in which the member or employee of The Agency has a direct or indirect interest that is in conflict or gives the appearance of conflict with the discharge of the member's or employee's duties;
 - (b) "Direct interest" means a pecuniary interest in the persons involved in a matter before the Agency. This interest applies to The Agency member or employee, The Agency member's or employee's relatives or an individual with whom or business as to which the member or employee has a pecuniary interest. For the purposes of this part, a relative is a spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, or nephew by blood, marriage or adoption; and
 - (c) "Indirect interest" means a personal interest in the persons involved in a matter before the Agency that is in conflict or gives the appearance of conflict with the discharge of the Agency member's or employee's duties;

- (2) All Agency members shall annually review and sign a statement acknowledging the statute, rules and policies concerning conflicts of interest.
- (3) Any member, upon determining that a matter scheduled for consideration by The Agency results in a conflict with a direct interest, shall immediately notify the executive director and shall be recused from any deliberation of the matter, from making any recommendation, from testifying concerning the matter, or from voting on the matter. The member shall join the public during the proceedings.
 - (a) Any member with an indirect interest shall publicly acknowledge such interest.
 - (b) All members shall make every reasonable effort to avoid even the appearance of a conflict of interest. If a member is uncertain whether the relationship justifies recusal, the member shall follow the determination by the legal counsel for The Agency.
 - (c) A determination by The Agency or any court that a member of The Agency with a direct interest failed to provide notice and be recused from deliberations of the matter, from making any recommendation, from testifying concerning the matter, or from voting on the matter, shall result in the member's automatic termination from The Agency and the position shall be considered vacant. The member shall not be eligible for appointment to any agency, board or commission of the state for a period of two (2) years.
 - (d) The executive director, upon determining that a conflict exists for the executive director or any member of the staff, shall notify the chair of The Agency and take such action as the chair prescribes and pursuant to this part.

Authority: T.C.A §§ 68—11—1602; 68—11—1604, 68—11—1605.

0720—8—.03 STAFF AND AGENCY DETERMINATIONS.

- (1) Persons seeking information and/or guidance from The Agency or staff may receive such information and/or guidance by any of three methods: informal staff advice, staff determinations, or official Agency determinations.
- (2) Staff Advice. Staff members may give advice or guidance orally or in writing when requested. Such informal staff advice is merely the personal opinion of the staff member, and does not represent the position of The Agency or any member thereof. Such advice is not binding on The Agency, and creates no precedent.
- (3) Staff Determinations. A staff determination may be issued in writing, and signed by the executive director or general counsel. While a staff determination represents the considered position of staff, it does not necessarily represent the position of The Agency. A staff determination is not required to be officially adopted by The Agency, and creates no binding precedent on The Agency.
 - (a) When an inquiry is received which does not specifically request an official Agency determination, the executive director will determine whether the inquiry should be handled as a staff determination or as an Agency determination.
- (4) Agency Determinations. An Agency determination represents a formal opinion of The Agency. Agency determinations are initially analyzed and drafted by staff, and presented to the full Agency during a regularly scheduled Agency meeting. The Agency may then adopt, reject, or modify staff's recommendation.

- (a) Written requests for Agency determinations should be received by the last business day of the preceding month to be included on The Agency's agenda for that month. In the discretion of the executive director, the first inclusion of the request for determination on The Agency's agenda may be for the purpose of public notice: the request may then be placed on the agenda for the next succeeding Agency meeting for The Agency's consideration and decision. The executive director may waive the provisions of this subsection, and place the request for determination before The Agency for consideration on the first inclusion on the agenda.
- (b) If the issue upon which a request for determination is based has been addressed by The Agency in prior determinations, or if the issue is otherwise not appropriate for a request for determination, staff will notify the person making the request and the request will not be placed on The Agency's agenda.

Authority: T.C.A. §§ 4—5—202; 68—11—1605; 68—11—1606; 68—11—1607.

0720—8—.04 ACCESS TO AGENCY RECORDS.

- (1) **Public Inspection.** All public records of The Agency are available for inspection during normal business hours in accordance with reasonable office policies.
- (2) **Copies.** Persons who wish to obtain copies of records in excess of 15 pages must request such copies in writing. Copies will be furnished at a cost of \$.25 per page up to 200 pages. Copies in excess of 200 pages shall be charged a rate of \$1.00 per page: such \$1.00 per page rate shall apply to all pages requested and copied, not to only the pages exceeding 200 pages.
 - (a) In the absence of exceptional circumstances, as approved by the executive director, outside copying machines shall not be used.
 - (b) In no event shall anyone other than an Agency member or staff member be allowed to take original Agency records outside of The Agency's business office.
- (3) **Audio Tapes—**Recordings of meetings of The Agency are available for review and duplication. For each audio tape or disc to be duplicated, the person requesting the duplication shall pay a fee of fifteen dollars (\$15.00).
- (4) **Monthly-Meeting Packet.** Notwithstanding the copy fee schedule established in Subsection (2) of this Rule, persons desiring to receive copies of the Monthly-Meeting Packet distributed to Agency Members may subscribe at the annual rate of \$1,500.00. Each Monthly-Meeting Packet will include copies of the meeting Agenda, certificate of need application summaries, related reports of the Departments of Health and Mental Health and Developmental Disabilities, and reports and correspondence pertaining to agenda items as required.

Authority: T.C.A. §§ 4—5—202; 10—7—506; 68—11—1605; 68—11—1606.

0720—8—.05 CONDUCTING AGENCY MEETINGS.

- (1) The Agency will hold regularly scheduled, public meetings to consider applications for certificates of need, and to conduct other business.
- (2) Meetings of The Agency will be under the direction of the Chair, or in the Chair's absence or at his/her request, the Vice-Chair or other designated member as determined by the Chair. The

meetings will be conducted in accordance with Robert's Rules of Order, except where otherwise provided by rule or statute.

- (3) All motions for the approval or disapproval of certificates of need and for Agency Determinations will be determined by roll call vote. Except where otherwise provided by rule or by statute, matters other than the approval or disapproval of a certificate of need and Agency Determinations may, at the discretion of the Chair or acting Chair, be determined by voice vote.
 - (a) Any Agency member present and voting on a matter which has been determined by a voice vote may request that a roll call vote be taken. In the event such a request is made, a roll call vote will be taken. No additional debate or discussion will be allowed on the matter, unless otherwise appropriate under applicable rules of parliamentary procedure.
 - (b) Conditions placed upon the granting of a certificate of need should be included in the motion for approval, or an amendment thereto, and determined in accordance with these rules.

Authority: T.C.A. §§ 4—5—202; 68—11—1604; 68—11—1605; 68—11—1607; 68—11—1609.

0720—8—.06 BEGINNING OF REVIEW CYCLES.

Review cycles shall begin on the first day of each month.

Authority: T.C.A. §§ 4—5—202; 68—11—1602; 68—11—1605; 68—11—1607.

RULES OF TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY

CHAPTER 0720-9 DEFINITIONS

TABLE OF CONTENTS

0720—9—.01 Definitions

0720—9—.01 DEFINITIONS. The following terms shall have the following meanings.

- (1) "Adult psychiatric" means inpatient mental health services provided to patients 18 years of age and over.
- (2) "Agency" means the Tennessee Health Services and Development Agency.
- (3) "Ambulatory surgical treatment center" ~~is as defined in T.C.A. Title 68, Chapter 11, Part 2, means any institution, place or building devoted primarily to the performance of surgical procedures on an outpatient basis.~~
- (4) "Capital expenditure" in relation to a proposed establishment of, modification, renovation, or addition to a health care institution, means an expenditure by or on behalf of a health care institution which, under generally accepted accounting principals, is not properly chargeable as an expense of operation and maintenance. Any series of expenditures, each less than the threshold, but which when taken together are in excess of the threshold, directed toward the

accomplishment of a single goal or project, requires a certificate of need. Any series of related expenditures made over a twelve (12) month period will be presumed to be a single project.

- (a) Establishment, modifications, additions, or renovations. In calculating the capital expenditure for establishment, modifications, additions, or renovations, "capital expenditure" is the amount per construction bid or total amount of invoices for the single project excluding major medical equipment.

(c) (b) — Equipment. ~~The cost of major medical equipment over the monetary threshold of T.C.A. § 68-11-1607 is not considered when determining the amount of capital expenditures for determining whether the monetary threshold of T.C.A. § 68-11-1607 is met for an establishment, modification, addition, or renovation. The cost of all other equipment, whether fixed or moveable, is considered.~~ The cost of all major medical equipment, whether fixed or movable, is considered in calculating the amount of the examination fee. The cost for such fixed and moveable equipment includes, but is not necessarily limited to all costs, expenditures, charges, fees and assessments which are reasonably necessary to put the equipment into use for the purposes for which the equipment was intended. Such costs specifically include, but are not necessarily limited to, the following:

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1. maintenance agreements, covering the expected useful life of the equipment;
2. federal, state, and local taxes and other government assessments; and
3. installation charges, excluding capital expenditures for physical plant renovation or in-wall shielding.

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~~If the acquisition is by lease, the cost is either the fair market value of the equipment, or the total amount of the lease payments, whichever is greater, taxes, government fees, assessments, and any other fees, assessments or charges directly associated with the acquisition of the equipment.~~

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- (c) Lease, loan, or gift. In calculating the value of a lease, loan, or gift, the "cost" is the fair market value of the above-described expenditures. In the case of a lease, the cost is the fair market value of the lease or the total amount of the lease payment, whichever is greater.
- (5) "Certification period" means the period of time beginning on the date of issuance of a certificate of need and ending on the expiration date of a certificate of need, as established by statute, rule, or order of The Agency.
 - (6) "Change of location" means a change of the specific location of an existing institution, facility, service, or piece of major medical equipment, in part or in its entirety. The following activities involving a home care organization are a change of location of a health care institution, and require a certificate of need:
 - (a) The addition of one or more counties to the licensed service-area of a home care organization;
 - (b) The change of location of a parent office to a different county.
 - (7) "Child and adolescent psychiatric" means inpatient mental health services provided to patients under 18 years of age.
 - (8) "Executive director" means the chief administrative officer of The Agency and the appointing authority, exercising general supervision over all persons employed by The Agency, as defined in T.C.A. § 68-11-1606.

- (9) "Expiration date" is the date upon which a certificate of need expires and becomes null and void. The expiration date may be established by statute, by rule, or by order of The Agency.
- (10) "Home health service" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
- (11) "Hospital" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
- (12) "Long-term categories" includes nursing home services, regardless of the length of stay, and any other health service which is intended or reasonably expected to result in an average length of stay of 21 days or longer.
- (13) ~~"Major medical equipment"~~ ~~"Cost."~~
- (a) ~~As used in T.C.A. §§ 68-11-1602 and 68-11-1607, "major medical equipment" means any single item of equipment or a series of components with related functions, within the definition and cost threshold set forth at the referenced statutes, and which costs more than the amounts determined under T.C.A. § 68-11-1607.~~
- (b) ~~The cost of major medical equipment includes all costs, expenditures, charges, fees and assessments which are reasonably necessary to put the equipment into use for the purposes for which the equipment was intended. Such costs specifically include, but are not necessarily limited to, the following:~~
1. ~~maintenance agreements, covering the expected useful life of the equipment;~~
2. ~~federal, state, and local taxes and other government assessments; and~~
3. ~~installation charges, excluding capital expenditures for physical plant renovation or in-wall shielding.~~
- (c) ~~Any individual components or a piece of medical equipment with related functions, which are purchased over a 12-month period shall be considered toward the cost of the piece of major medical equipment.~~
- (d) ~~If the acquisition is by lease, the cost is either the fair market value of the equipment, or the total amount of the lease payments, whichever is greater.~~
- (14) "Mental health hospital" means a public or private hospital or facility or part of a hospital or facility equipped to provide inpatient care and treatment for persons with mental illness or serious emotional disturbance, as licensed by the Department of Mental Health and ~~Substance Abuse Services~~Developmental Disabilities.
- (15) ~~"Mental retardation-Intellectual disability~~ institutional habilitation facility" means a facility which offers on a regular basis health related services to individuals with intellectual disabilities ~~mental retardation~~ who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide but, because of physical or mental condition require residential care and services (more than room and board) and involves health related care under the supervision of a physician. Such a facility also offers an intensive program of habilitative services, as licensed by the Department of ~~Mental Health~~Intellectual and Developmental Disabilities.
- (16) "Neonatal intensive care unit" means a special care unit staffed and equipped to provide professional intensive treatment for the care of newborns with severe or complicated illnesses and/or high-risk newborn infants, staffed by a neonatologist and specialized nurses and in which bassinets are used as licensed beds.

- (17) "Not directly related to patient care" may include the following types of single, isolated expenditures:
- (a) Telephone systems;
 - (b) Non-clinical data processing systems;
 - (c) Heating and/or air conditioning systems;
 - (d) Energy conservation devices;
 - (e) Parking facilities;
 - (f) Roof repairs;
 - (g) Medical office buildings;
 - (h) Warehouses; and
 - (i) Cafeterias.
- (18) "Nursing home" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
- (19) "Outpatient diagnostic center" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
- (20) "Person" where the context requires, may refer to any natural person, legal entity, facility, or institution, as defined in T.C.A. § 68-11-1602.
- (21) "Recuperation center" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
- (22) "Residential hospice" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
- (23) "Service area" means the county or counties, or portions thereof, representing a reasonable area in which a health care institution intends to provide services and in which the majority of its service recipients reside.
- (24) "Substantive amendment" as used in T.C.A. § 68—11—1607 means any amendment which has the effect of increasing the number of beds, square footage, cost, or other elements which are reasonably considered in the discretion of The Agency to be integral components of the application. A reduction of the above referenced components may be considered a substantive amendment if the amendment and supporting documentation are not received by the staff and Agency in a timely manner, necessary to allow The Agency to make an informed decision. Nothing in this rule shall be interpreted as limiting The Agency's authority to approve or deny all or part of any given application.

Authority: T.C.A. §§ 4—5—202; 68—11—1605.

**RULES
OF
TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY**

**CHAPTER 0720-10
CERTIFICATE OF NEED PROGRAM – SCOPE AND PROCEDURES**

TABLE OF CONTENTS

- 0720—10—.01 Private Professional Practice Exemption
- 0720—10—.02 Activities Requiring Notification — Miscellaneous Provisions
- 0720—10—.03 Standard Procedures for Certificate of Need
- 0720—10—.04 Emergency Certificate of Need
- 0720—10—.05 Consent Calendar
- 0720—10—.06 Expiration, Revocation, and Modification of Issued Certificates

0720—10—.01 PRIVATE PROFESSIONAL PRACTICE EXEMPTION.

- (1) Seeking licensure of a place, building, or facility as a health care institution is inconsistent with an assertion that such place, building, or facility is being occupied “exclusively as the professional practice office” of a medical doctor, osteopath, or dentist. Therefore, any person who seeks licensure as a health care institution as set forth in T.C.A. § 68—11—1602 must secure a certificate of need.
- (2) To establish or maintain a health care institution that does not require licensure, a certificate of need is required unless the place, building, or facility is occupied exclusively as the professional practice of a medical doctor, osteopathic doctor, or dentist. In determining whether the professional practice exemption is met, The Agency may consider all relevant factors, including but not limited to, form of facility ownership, types of service reimbursement sought and/or received, patient referral sources, advertising/marketing efforts, and whether the private practitioner retains complete responsibility for management and business control.
- (3) The “private professional practice” exemption has no application in regard to initiation of services, ~~acquisition of major medical equipment,~~ or other actions requiring a certificate of need. The applicability of the exemption, as defined above, is limited to the definition of a “health care institution.”

Authority: T.C.A. §§ 4—5—202; 68—11—1605; 68—11—1602; 68—11—1607.

~~0720—10—.02 ACTIVITIES REQUIRING NOTIFICATION—MISCELLANEOUS PROVISIONS.~~

- ~~(1) Any nursing home which increases its bed complement pursuant to the ten (10) bed/ten (10)% provision of T.C.A. § 68—11—1607 must have the additional beds licensed within one year of Agency receipt of notice of the increase. If such beds are not licensed within such one (1) year period, the notice shall be void, and the increase in bed complement shall not be implemented.~~
- ~~(2) Any hospital with fewer than one hundred (100) licensed beds, which increases its bed complement pursuant to the ten (10) bed provision of T.C.A. § 68—11—1607 must have the additional beds licensed within one (1) year of Agency receipt of the notice of the increase. If the additional beds are not licensed within such one (1) year period, the notice shall be void, and the increase in bed complement shall not be implemented.~~
- ~~(3) For purposes of the nursing home ten (10) bed/ten (10)% exemption, and the hospital ten (10) bed exemption, the one (1) year period after which the next such exempted change may be initiated at the facility shall begin on the date when the most recent exempted bed change at the facility is actually licensed. For the purposes of this exemption, “licensed bed capacity” shall mean that number of beds actually licensed in a facility at the time the exempted increase or decrease is initiated.~~
- ~~(4) Any person claiming the exemption from certificate of need requirements for the acquisition of major medical equipment on the basis that such equipment is a replacement or upgrade of~~

~~existing equipment, shall provide notice to The Agency at least sixty (60) days prior to the purchase on a form provided by The Agency.~~

~~(5) Notice of a change of ownership occurring within two (2) years of the date of initial licensure of a health care institution must be provided to The Agency within thirty (30) days of the effective date on forms provided by The Agency.~~

Authority: T.C.A. §§ 4—5—202; 68—11—1602; 68—11—1605; 68—11—1607.

0720—10—.03 STANDARD PROCEDURES FOR CERTIFICATE OF NEED.

- (1) Application Form. Each application will be filed using standard application forms provided by The Agency. The applicant must provide all information requested in the application forms.
- (2) Letters of Intent.
 - (a) Each Letter of Intent shall be filed using standard forms provided by The Agency. The applicant must provide all information requested in the Letter of Intent form. The applicant must fully comply with all instructions contained in the Letter of Intent form provided by The Agency.
 - (b) Each Letter of Intent for home care organization applications shall also specify all counties in the proposed service area.
 - (c) Any Letter of Intent which contains insufficient information may be deemed void. The Letter of Intent may be refiled, but it is subject to the same requirements as an original Letter of Intent.
 - (d) Simultaneous with its filing with The Agency, the Letter of Intent shall be published for one day in a newspaper of general circulation in the county where the proposed project is to be located. The Letter of Intent shall be published in the Legal Notice section in a space which should be no smaller than four (4) column inches. Publication must be in the same form and format as the Publication of Intent form provided by The Agency.
 1. For the purpose of these rules, "simultaneous" means that publication should, if possible, occur on the same day as filing. A day or two delay between filing and publication will not necessarily void the Letter of Intent, but both filing and publication must occur between the 1st and 10th day of the month preceding the beginning of the review cycle. If the last day for filing the Letter of Intent is a Saturday, Sunday or State holiday, filing must occur on the last preceding regular business day. If both filing and publication do not occur within the time period, the Letter of Intent will be null and void, and the applicant will be notified in writing.
 2. For the purpose of these rules, "newspaper of general circulation" means a publication with the following characteristics:
 - (i) is regularly issued at least once a week;
 - (ii) has a second class mailing privilege;
 - (iii) includes a Legal Notice Section;
 - (iv) is not fewer than four (4) pages in length;
 - (v) has been published continuously during the immediately preceding one year period;
 - (vi) is published for dissemination of news of general interest; and

- (vii) is circulated generally in the county in which it is published.
3. In any county where a publication fully complying with this definition does not exist, the Executive director is authorized to determine appropriate publication to receive any required Letter of Intent. A newspaper which is engaged in the distribution of news of interest to a particular interest group or other limited group of citizens, is not a "newspaper of general circulation."
4. In the case of an application for or by a home care organization, the Letter of Intent shall be published in each county in which the agency will be licensed or in a regional newspaper which qualifies as a newspaper of general circulation in each county. In those cases where the Letter of Intent is published in more than one newspaper, the earliest date of publication shall be the date of publication for the purpose of determining the date for the timely filing of the application. Both the Letter of Intent and the application must specify the counties to be served.
- (3) Simultaneous Review. Those persons desiring simultaneous review for a certificate of need for which a Letter of Intent has been filed shall file a Letter of Intent with The Agency and the original applicant, and publish the Letter of Intent simultaneously in a newspaper of general circulation, as those terms are defined in sub-paragraph (2)(d), above, in the same county as the original applicant within ten (10) days after publication by the original applicant. The Executive director or his/her designee will determine whether applications are to be reviewed simultaneously.
- (a) The applicant seeking simultaneous review shall, at the time the Letter of Intent is filed with The Agency, also file a verified statement certifying it has complied with the procedural requirements for simultaneous review and evidence that the Notice was received by The Agency business office and the original applicant within ten (10) days after publication by the original applicant.
- (b) In addition to the procedural requirements, the following factors may be considered by the Executive director in determining whether the applications are appropriate for simultaneous review:
1. Similarity of services area.
 2. Similarity of location;
 3. Similarity of facilities; and
 4. Similarity of service to be provided.
- (c) If, at the time an application is filed for simultaneous review, there is already another application filed for simultaneous review against the original application, the second application seeking simultaneous review may be simultaneously reviewed against both the original application and the other application seeking simultaneous review.
- (d) The order in which applications filed for simultaneous review will be placed on the agenda will be determined by the order in which the Letters of Intent were received in The Agency office.
- (e) Any application which is determined to not meet the criteria for a "simultaneous review" shall be null and void. The application may be re-filed for a subsequent review cycle, but is subject to the same requirements as an original application.
- (4) Applications.

- (a) All applications must be filed in triplicate with The Agency within five (5) days after publication by the applicant, and must be accompanied by the filing fee. The date of filing shall be the actual date of receipt. If the last day for filing an application falls on a Saturday, Sunday, or State holiday, the application, to be timely, must be filed on the last preceding regular business day.
 - (b) Failure by the applicant to file an application within five (5) days after publication of the Letter of Intent in accordance with (a) above shall render the Letter of Intent, and hence the application, void.
 - (c) When an application is received at The Agency office, it must include an initial non-refundable filing fee, as provided elsewhere in these rules. Review for completeness shall not begin prior to the receipt of the filing fee.
 - (d) Each application that is accompanied by the applicable filing fee will be reviewed for completeness by Agency staff.
 - 1. If it is deemed complete, The Agency will acknowledge receipt and notify the applicant that the review period will begin as of the date specified in the notification. Deeming complete means only that all questions and requests for information have been responded to in some reasonable manner. Deeming complete shall not be construed as validating the sufficiency of the information provided for the purposes of addressing the criteria under the applicable statutes, rules, and other guidelines.
 - 2. If the application is incomplete, responses to requests for supplemental information by the staff must be completed by the applicant and filed at The Agency office within sixty (60) days of the written request by Agency staff. Failure of the applicant to meet this deadline will result in the application being considered withdrawn and returned to the contact person. Resubmittal of the application must be accomplished in accordance with Rule 0720—10— .03 and requires an additional filing fee.
 - (e) An application for certificate of need shall not be amended in a substantive way by the applicant after being filed with The Agency. If the application is amended in a substantive manner varying from the Letter of Intent or the original application filed with The Agency, the application may be deemed void. This Rule does not prohibit correction of clerical errors in the application.
- (5) Examination Filing Fee.
- (a) The amount of the initial fee shall be equal to \$5.75 per \$1,000 of the estimated capital expenditure involved, but in no case shall this fee be less than \$15,000 nor more than \$95,000.
 - (b) Any unpaid balance of litigation costs previously assessed against the applicant or any related entity of the applicant by the ~~Tennessee Health Facilities Commission or the~~ Tennessee Health Services and Development Agency may be offset against any filing fees paid. An application will not be deemed complete until the full filing fee, as well as such off set amounts, are paid in full.
 - (c) A final fee will be determined upon The Agency's receipt of the final project report. The amount of the final fee shall be the difference between the initial fee and the total fee based on actual final project costs, as such fee is calculated based on \$5.75 per \$1,000 of project costs, but in no case shall the total fee be less than \$15,000 nor more than \$95,000.

- (6) Upon request by interested parties or at the direction of the executive director, the staff of the agency shall conduct a fact-finding public hearing on the application in the area in which the project is to be located. The applicant shall reimburse the Agency for its costs associated with the fact-finding public hearing, including but not limited to costs associated with the hearing location and travel expenses for Agency staff conducting the hearing.
- (7) Distribution of Applications. The Agency will promptly forward a copy of each application deemed complete to the Department of Health, or to the Department of Mental Health and Developmental Disabilities, and in doing so will fix the date on which the review process established by statute and these regulations will commence.
- (87) Withdrawal of Applications. An application may be withdrawn at any time by the applicant.
- (98) Beginning of the Review Cycle. The review cycle for each application shall begin on the first day of the appropriate month after the application has been deemed complete by the staff of The Agency.
- (109) Reviewing Agencies' Actions on Applications.
 - (a) The Department of Health, ~~or the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual~~ and Developmental Disabilities, shall within seven (7) days from the receipt of a completed application give notice to The Health Services and Development Agency of its receipt in writing. The appropriate reviewing agency shall expeditiously review all applications in a consistent manner and conduct such studies and inquiries thereon as may be determined necessary by the appropriate reviewing agency, by The Health Services and Development Agency's rules, or upon request of The Health Services and Development Agency, to enable it to make a report to The Health Services and Development Agency. Applicants must comply promptly with all reasonable requests made by the appropriate reviewing agency, for additional information for the purpose of this review. Copies of said studies and all correspondence related to the application shall be forwarded to The Health Services and Development Agency by the reviewing agency.
 - (b) Within sixty (60) days (or thirty (30) days where the application is on the consent calendar), of the date fixed by The Health Services and Development Agency pursuant to Rule 0720—10—03(4), the reviewing agency shall file its official written report with The Health Services and Development Agency. A copy of this report shall be forwarded by the reviewing agency to the applicant, and to any other person requesting one.
- (110) Reviewing Agency's Report to The Health Services and Development Agency. The reviewing agency's report shall address at a minimum each of the applicable criteria for certificate of need set forth in the statutes, rules, and the state health plan. The reviewing agency shall clearly set forth any planning methodologies, data bases, and resource materials utilized in making its findings. The reviewing agency may include other information it deems appropriate and informative. The report shall address the following:
 - (a) The applicant's compliance with the criteria found in Agency Rules 0720-11;
 - (b) A verification of the methodologies provided by the applicant to meet the criteria specified in (a), as well as identification of any additional methodologies that would further clarify compliance with the criteria;
 - (c) An assessment of the applicant's compliance with any applicable Guidelines for Growth; and

- (d) An analysis of any information received from the TennCare Bureau as to the previous, current and proposed TennCare participation or non-participation of the applicant and any affiliate(s) involved with the project.
- (124) An applicant may provide written supporting information to its application during the review cycle. Further, the applicant will have the right to respond in writing to the report made by the reviewing agency. The reviewing agency and the Health Services and Development Agency shall receive a copy of the applicant's response to the agency's report not less than ten (10) days prior to the Health Services and Development Agency meeting.
- (132) Holder of certificate of need. A certificate of need will normally be issued to the person ~~who to whom license for the health care institution is or will be issued, or if not a health care institution as defined in T.C.A. §68-11-1602, the person who will provide the service, owns the real property of the institution or facility concerned, provided, however, that a certificate may be issued to:~~
- (a) ~~The lessee or permittee of the property in cases where the property is not specifically designed for the provision of health care services and the lessor is not in the regular business of providing space for health care activities;~~
 - (b) ~~The lessee of the property where the terms of the lease convey long-term control of the facility to the lessee;~~
 - (c) ~~A management company where the terms of the management agreement convey long-term control of the facility to the management company, and management company also has significant responsibility for implementing and completing the project; or~~
 - (d) ~~The person who directly provides equipment or facilities for health care activities when that person is not the owner of the property or facility.~~

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Authority: T.C.A. §§ 4-5-202; 68-11-1605; 68-11-1607; 68-11-1608; 68-11-1609.

0720-10-04 EMERGENCY CERTIFICATE OF NEED.

- (1) Where an unforeseen event necessitates action of a type requiring a certificate of need and the public health, safety, or welfare would be unavoidably jeopardized by compliance with the standard procedures for application and granting of a certificate of need, The Agency may issue an emergency certificate of need.
- (2) An emergency certificate of need may be issued upon request of the applicant when the Executive director and officers of The Agency concur, after consultation with the appropriate reviewing agency. Prior to an emergency certificate of need being granted, the applicant must publish notice of the application in a newspaper of general circulation, and Agency members must be notified by Agency staff of the request.
- (3) A decision regarding whether to issue an emergency certificate of need will be considered at the next regularly scheduled Agency meeting unless the applicant's request is necessitated by an event that has rendered its facility, equipment or service inoperable. In such case, The Agency's Chair and Vice-Chair may act immediately to consider the application for an emergency certificate of need.
- (4) Said certificate is valid for a period not to exceed one hundred twenty (120) days: when the applicant has applied for a certificate of need under standard Agency procedures, an extension of the emergency certificate of need may be granted.
- (5) ~~For the purpose of this rule, the term "unforeseen event" means an event which could not be reasonably foreseen and which significantly affects the habitability of the facility or operation of the service including but not limited to fire, flood, acts of God, and the failure of fixed equipment such as heating, ventilating and air conditioning equipment, elevators, boilers,~~

~~electrical transformers and switch gears, sterilization equipment, water supply and other utility connections.~~

Authority: T.C.A. §§ 4—5—202; 68—11—1605.

0720—10—.05 CONSENT CALENDAR.

- (1) Each ~~monthly~~ meeting's agenda will be available for both a consent calendar and a regular calendar.
- (2) In order to be placed on the consent calendar, the application must not be opposed by anyone having legal standing to oppose the application, and the executive director must determine that the application appears to meet the established criteria for granting a certificate of need. Public notice of all applications intended to be placed on the consent calendar will be given.
- (3) As to all applications which are placed on the consent calendar, the reviewing agency shall file its official report with The Agency within thirty (30) days of the beginning of the applicable review cycle.
- (4) If opposition by anyone having legal standing to oppose the application is stated in writing prior to the application being formally considered by The Agency, it will be taken off the consent calendar and placed on the next regular agenda. Any member of The Agency may state opposition to the application being heard on the consent calendar, and if reasonable grounds for such opposition are given, the application will be removed from the consent calendar and placed on the next regular agenda.
 - (a) For purposes of this rule, the "next regular agenda" means the next regular calendar to be considered at the same monthly meeting.
- (5) Any application which remains on the consent calendar will be individually considered and voted upon by The Agency.

Authority: T.C.A. §§ 4—5—202; 68—11—1605; 68—11—1606; 68—11—1608.

0720—10—.06 EXPIRATION, REVOCATION, AND MODIFICATION OF ISSUED CERTIFICATES.

- (1) Prolonged certification periods and extensions of expiration dates of certificates are disfavored, ~~and will be sparingly granted.~~ Any request for a prolonged certification period must be clearly set forth in the application in order to be considered. A request for an extension of the expiration date must be made in writing to The Agency and filed prior to the first day of the month in which the request is to be considered by The Agency, and will be processed in accordance with policies established by staff.
- (2) Prolonged certification period. A prolonged certification period will be granted only where exceptional circumstances are shown to exist which make completion of the project within the time limits prescribed by statute unachievable using all reasonable means.
- (3) Extension of expiration date ~~may be granted~~ due to unforeseen occurrence. ~~Extension of the expiration date of an issued certificate may be granted where some unforeseen and reasonably unavoidable occurrence causes a delay which makes completion of the project by the original expiration date unachievable using all reasonable means.~~
 - ~~(a) Occurrences which may justify an extension of the expiration date include, without limitation, fire, flood, explosion, catastrophic weather conditions, riots or other civil disturbances, and similar occurrences. A court order enjoining the project, or otherwise significantly interfering with the completion of the project, may, in the discretion of The~~

~~Agency, constitute grounds for an extension of, the expiration date. Ordinarily, lack of adequate or accurate planning and/or financial difficulties will not justify an extension of the expiration date.~~

- (b) All requests for extension of the expiration date must be filed in triplicate at The Agency's office and be accompanied by a filing fee. The filing fee shall be an amount which bears the same ratio to the initial examination fee submitted with the application, as the requested extension of time bears to the original certification period.
- (4) Extension of expiration date due to appeal. In the event of a proper and timely appeal of The Agency's decision to grant a certificate of need, the certification period will be automatically extended, and the expiration date will be automatically stayed, during the pendency of the appeal.
 - (a) The time period of the extension/stay will be equal to the period of time beginning with the date the petition is received at The Agency's office, and ending with the effective date of the decision of the appellate court of last resort, or the expiration of the time period available for seeking further appellate review (where such appellate review is not sought), whichever occurs first.
 - (b) At the conclusion of the appellate process, as described in subparagraph (4)(a) above, a revised certificate of need, reflecting the new expiration date, may be issued upon request of the certificate holder.

~~(5) In order to show substantial and timely progress in seeking an extension of the expiration date, the certificate holder must show that the project was on schedule and could reasonably have been completed by the expiration date, but for the unforeseen and unavoidable occurrence.~~

~~(a) By way of illustration, but not limitation, if construction had not proceeded beyond the footing stage at three months prior to the expiration date, substantial and timely progress would likely not be shown.~~

- (6) The Agency will conduct an annual review of progress of each project for which a certificate of need has been granted. The certificate holder shall timely respond to staff requests for information in connection with such progress reviews, and otherwise cooperate with staff in such progress reviews. As part of this progress review, the certificate holder shall submit to The Agency a copy of any signed agreements with TennCare managed care organizations executed after the date the certificate of need was granted, or a status update on any pending negotiations with such entities, within six (6) months after issuance of the certificate of need, and again at twelve (12) months. The certificate holder must show that it is making substantial and timely progress in implementing the project. In the absence of such a showing, The Agency may initiate proceedings to revoke the certificate of need.
- (7) Special corrections and revised certificates. Any issued certificate of need containing typographical errors or requiring similar clerical changes on its face, should be reported by the certificate holder and/or may be recalled by The Agency or staff. In the event of such non-substantive changes, or technical errors or omissions the executive director may issue a "revised" certificate in correct form. The certificate holder shall surrender the original certificate prior to its reissuance in corrected form.
 - (a) Examples of errors and omissions and other nonsubstantive changes which may be made through a revised certificate include:
 - 1. A typographical error;
 - 2. A change in the name of an institution or facility;
 - (i) This refers only to a change in the "doing business as" name, not to a change of ownership. Any change of ownership occurring prior to licensure of a

proposed new health care institution is covered in paragraph eight (8) of this rule.

- (ii) A change of ownership of a health care institution occurring within two years of initial licensure requires notice to The Agency, but no revised or modified certificate of need will be issued.

- 3. An extension of the expiration date due to a completed appeal; and
- 4. Other non-substantive changes as approved by the executive director;

- (b) Except for changing the expiration date due to a completed appeal as provided above, a revised certificate pursuant to this subdivision shall not be construed as extending the expiration date.

(8) Modifications and/or addendums to issued certificates. In the event a certificate holder wishes to make substantive changes relating to the scope, cost, or duration of the project, written request must be made to, and formally approved by, The Agency in its discretion. If approved, such changes may be reflected in either the issuance of a modified certificate of need, or by the issuance of an addendum to the original certificate. If the request is denied, The Agency's decision is final, and no appeal shall be allowed.

- (a) Changes included within the provisions of this subdivision may include, but are not limited to, cost increases or decreases, downscaling or increasing the scope or square footage of a project, requests for an extension of the expiration date and changes of ownership where allowed by law and Agency rules. Generally, such changes resulting in either a ten (10) percent increase or decrease shall be presumed substantive, though there will be instances where changes greater than ten (10) percent would not be substantive and instances where changes less than ten (10) percent would be substantive, depending upon the totality of the circumstances. In no event will any change in cost of less than \$10,000 be deemed a substantive cost modification. In no event will any change which would independently require a certificate of need be considered for a modification or addendum. Multiple requests for modifications of a certificate of need, and such other modifications which in the discretion of The Agency would have significantly impacted public participation in The Agency's consideration of the original application, may be considered by The Agency as requiring a separate certificate of need.

- 1. Certain changes of ownership ("change of control"), prior to licensure constitutes the transfer of a certificate of need, and will render the certificate null and void, as provided in T.C.A. § 68—11—1620.

In addition to the circumstances constituting a change of ownership ("change of control") as specified in T.C.A. § 68—11—1620, the termination of interest of over 50% of the membership of a non-profit corporation constitutes a change of ownership/change of control. If the change is made from a non-profit, membership corporation to a non-profit, non-membership corporation, there is no change of control if the boards of directors of the corporations are interlocking to the extent that there is no actual change of control of the corporate powers of the corporation which will hold the certificate of need.

- (b) Any certificate holder seeking a modification or addendum must make a formal request in writing to The Agency, in accordance with policies adopted by The Agency staff. Such written request must be accompanied by the appropriate supporting documentation justifying the requested modification. Simultaneously with the submission of such written request, the certificate holder shall also file written notice with all parties who sought simultaneous review, filed competing applications, or who opposed the original

application. Where an extension of the expiration date is sought, the request must be accompanied by the fee referred to elsewhere in this rule.

- (c) A change of site may not be approved through a modification or addendum; a separate certificate of need is required.
- (9) Any certificate holder seeking the removal of a condition which was placed on the certificate of need may make an application in writing to The Agency, in accordance with policies adopted by The Agency staff. At the time it makes such written application with The Agency, the certificate holder shall also file written notice with all parties who sought simultaneous review, filed competing applications, or who opposed the original application, and shall publish notice thereof in a newspaper of general circulation. In order to show "good cause" for removing a condition, the certificate holder has the burden of showing that circumstances have significantly changed, which necessitate the removal of the condition. Mere disagreement or dissatisfaction with the condition will normally not be considered to be good cause for removing the condition.

- ~~(a) (i)~~ Application to The Agency for the addition of a specialty to an issued certificate that is limited to either a single specialty or specific multiple specialties shall be made by the filing of a new certificate of need application form.
- ~~(b) Application to The Agency for the addition of therapeutic cardiac catheterization to an issued certificate that is limited to diagnostic cardiac catheterization shall be made by the filing of a new certificate of need application.~~

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Authority: T.C.A. §§ 4-5-202; 68-11-1605; 68-1-1606; 68-1-1607; 68-11-1609; 68-11-1611; 68-11-1620.

**RULES
OF
TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY**

**CHAPTER 0720-11
CERTIFICATE OF NEED PROGRAM – GENERAL CRITERIA**

TABLE OF CONTENTS

0720—11—.01 General Criteria for Certificate of Need

0720—11—.01 GENERAL CRITERIA FOR CERTIFICATE OF NEED. The Agency will consider the following general criteria in determining whether an application for a certificate of need should be granted:

- (1) Need. The health care needed in the area to be served may be evaluated upon the following factors:
 - (a) The relationship of the proposal to any existing applicable plans;
 - (b) The population served by the proposal;
 - (c) The existing or certified services or institutions in the area;
 - (d) The reasonableness of the service area;
 - (e) The special needs of the service area population, including the accessibility to consumers, particularly women, racial and ethnic minorities, TennCare participants, and low-income groups;
 - (f) Comparison of utilization/occupancy trends and services offered by other area providers;

- (g) The extent to which Medicare, Medicaid, TennCare, medically indigent, charity care patients and low income patients will be served by the project. In determining whether this criteria is met, the Agency shall consider how the applicant has assessed that providers of services which will operate in conjunction with the project will also meet these needs.
- (2) Economic Factors. The probability that the proposal can be economically accomplished and maintained may be evaluated upon the following factors:
- (a) Whether adequate funds are available to the applicant to complete the project;
 - (b) The reasonableness of the proposed project costs;
 - (c) Anticipated revenue from the proposed project and the impact on existing patient charges;
 - (d) Participation in state/federal revenue programs;
 - (e) Alternatives considered; and
 - (f) The availability of less costly or more effective alternative methods of providing the benefits intended by the proposal.
- (3) Contribution to the Orderly Development of Adequate and Effective Healthcare Facilities and/or Services. The contribution which the proposed project will make to the orderly development of an adequate and effective health care system may be evaluated upon the following factors:
- (a) The relationship of the proposal to the existing health care system (for example: transfer agreements, contractual agreements for health services, the applicant's proposed TennCare participation, affiliation of the project with health professional schools);
 - (b) The positive or negative effects attributed to duplication or competition;
 - (c) The availability and accessibility of human resources required by the proposal, including consumers and related providers;
 - (d) The quality of the proposed project in relation to applicable governmental or professional standards.
- (2) Quality of the Healthcare to Be Provided. Whether the proposed project will meet appropriate quality standards.
- (54) Applications for Change of Site. When considering a certificate of need application which is limited to a request for a change of site for a proposed new health care institution, The Agency may consider, in addition to the foregoing factors, the following factors:
- (a) Need. The applicant should show the proposed new site will serve the health care needs in the area to be served at least as well as the original site. The applicant should show that there is some significant legal, financial, or practical need to change to the proposed new site.
 - (b) Economic factors. The applicant should show that the proposed new site would be at least as economically beneficial to the population to be served as the original site.

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- (d) (e) ——— Contribution to the orderly development of health care facilities and/or services. The applicant should address any potential delays that would be caused by the proposed change of site, and show that any such delays are outweighed by the benefit that will be gained from the change of site by the population to be served.
- (e) Whether the proposed project will meet appropriate quality standards.

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- (65) Certificate of need conditions. In accordance with T.C.A. § 68-11-1609, The Agency, in its discretion, may place such conditions upon a certificate of need it deems appropriate and enforceable to meet the applicable criteria as defined in statute and in these rules.

Authority: T.C.A. §§ 4-5-202; 68-11-1605; 68-11-1609.

**RULES
OF
TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY**

**CHAPTER 0720-12
CERTIFICATE OF NEED PROGRAM – APPLICATION,
DISCLOSURE OF INFORMATION AND REPORTING REQUIREMENTS**

TABLE OF CONTENTS

0720—12—.01	Standard Application
0720—12—.02	Report of Bed Increases Not Requiring a Certificate of Need
0720—12—.03	Replacement or Upgrade of Major Medical Equipment
0720—12—.04	Report of Change of Ownership of Licensed Institutions
0720—12—.05	Registration of Equipment

0720—12—.01 STANDARD APPLICATION.

- (1) Application for a certificate of need shall be made on form(s) provided by The Agency. The applicant must provide all information requested in the application forms. The information which may be required in the application form(s) includes, but is not necessarily limited to, the following:
- (a) Facility identification, including legal interests and status, operator and owners;
 - (b) Detailed project description;
 - (c) Detailed project cost data;
 - (d) Detailed disclosure of anticipated financing mechanism;
 - (e) Project operating costs and revenues, patient charges, and occupancy rate;
 - (f) (f) ——— Information on the project's relationship to public needs and the existing health service system;
 - (g) Information on whether the proposed project will meet appropriate quality standards; and
 - (g) A copy of any signed agreement between the applicant and TennCare managed care organizations; if a signed agreement has not been executed prior to The Agency's consideration of the application, the applicant shall provide a list of any such organizations with whom the applicant is negotiating, or a statement that the applicant does not intend to contract with any TennCare managed care organization(s).

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- (2) The accuracy of the information provided must be attested to by the responsible party or his agent in a notarized statement. Providing false, incorrect, misleading, or fraudulent information is grounds for revocation of the certificate of need.

Authority: T.C.A. §§ 4—5—202; 68—11—1605; 68—11—1607; 68—11—1619.

0720—12—.02 REPORT OF BED INCREASES NOT REQUIRING A CERTIFICATE OF NEED.

- (1) Any nursing home, rehabilitation facility, mental health hospital or hospital which is increasing the number of its licensed beds without the necessity of obtaining a certificate of need, as provided by law, shall report such activity on forms provided by The Agency.
- (2) Any nursing home, rehabilitation facility, mental health hospital or hospital reporting such increases must provide all information requested in the form(s). Information required to be provided by the forms may include, but not be limited to, the following:
- (a) Facility identification;
 - (b) Date of most recent increase in number of licensed beds prior to the increase being reported, number of beds increased, and type of beds;
 - (c) Number of licensed beds prior to the request;
 - (d) Number of beds being increased
 - (e) category of beds being increased; and
 - (f) Anticipated date of licensure/certification.

Authority: T.C.A. §§ 4—5—202; 68—11—1605; 68—11—1607.

0720-12-.03 ANNUAL REPORTS CONCERNING CONTINUED NEED AND APPROPRIATE QUALITY MEASURES

Annual reports concerning continued need and appropriate quality measures, as required by law, shall be made on form(s) provided by The Agency. The applicant must provide all information requested in the annual reporting forms. The information which may be required in the annual reporting form(s) includes, but is not necessarily limited to, the following:

- (1) Information relevant to whether the service or facility is necessary to provide needed health care in the area to be served; and
- (2) Information pertaining to whether the service or facility meets appropriate quality measures, including but not limited to any requested statistics, measurements, certifications, regulatory actions, and suspension or termination by payors.

0720-12-.04 ANNUAL REPORTS CONCERNING MAGNETIC RESONANCE IMAGING SERVICES

Annual reports concerning magnetic resonance imaging services, as required by law, shall be made on form(s) provided by The Agency. The applicant must provide all information requested in the application forms. The information includes – for adult and pediatric patients – the mix of payors by percentage of cases for the prior calendar year for its

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patients, including private pay, private insurance, uncompensated care, charity care, medicare, and Medicaid.

0720—12—.03—REPLACEMENT OR UPGRADE OF MAJOR MEDICAL EQUIPMENT.

- (1) ~~Any person claiming an exemption from the certificate of need requirements for the replacement or upgrade of major medical equipment shall report the replacement or upgrade on forms provided by The Agency.~~
- (2) ~~Any person claiming the exemption must provide all information requested in the form(s). Information which may be required by the form(s) may include, but not be limited to the following:~~
 - (a) ~~A description of the original equipment, and of the replacement or upgraded equipment;~~
 - (b) ~~The cost of the original equipment and of the replacement or upgraded equipment, and whether the acquisition was by purchase, lease, or otherwise;~~
 - (c) ~~The expected useful life of the original equipment, and of the replacement or upgraded equipment;~~
 - (d) ~~The date of acquisition of the original equipment, and of the replacement or upgraded equipment; and~~
 - (e) ~~The owner of the original equipment, and of the replacement or upgraded equipment.~~

~~Authority: T.C.A. §§ 4—5—202; 68—11—1605; 68—11—1607.~~

0720—12—.0504 REPORT OF CHANGE OF OWNERSHIP OF LICENSED INSTITUTIONS.

- (1) Notice of a change of ownership of a health care institution, occurring within two years of the date of initial licensure, must be reported to The Agency in writing. Any person reporting such a change of ownership must provide all information requested by The Agency. Such information which may be required may include, but not be limited to, the following:
 - (a) Identification of the current owner of the health care institution;
 - (b) Identification of the proposed new owner of the health care institution;
 - (c) Identification of the health care institution, the ownership of which is proposed to be transferred; and,
 - (d) The effective date of the proposed change of ownership.

~~Authority: T.C.A. §§ 4—5—202; 68—11—1605; 68—11—1607; 68—11—1618.~~

0720—12—.0605 REGISTRATION OF EQUIPMENT.

- (1) Ownership of computerized axial tomographers, ~~lithotripters,~~ magnetic resonance imagers, linear accelerators, positron emission tomography, and any other piece of equipment specified by law, must be made on forms provided by The Agency within ninety (90) days of acquisition of the equipment.

- (2) The person registering such equipment must provide all information requested in the form(s) provided by Agency staff. Information which may be required by the form(s) may include, but not be limited to, the following:
 - (a) Identification of the owner of such equipment;
 - (b) The location of the equipment, including facility identification;
 - (c) Whether the acquisition is by purchase, lease, or otherwise;
 - (d) The date of delivery of the equipment; and
 - (e) The expected useful life of the equipment.
- (3) All such equipment shall be filed on an annual inventory survey developed by Agency staff. The survey shall include, but not be limited to, the identification of the equipment and utilization data according to source of payment. The survey shall be filed no later than thirty (30) days following the end of each state fiscal year. The Agency is authorized to impose a penalty not to exceed fifty dollars (\$50) for each day the filing of the survey is late.

Authority: T.C.A. §§ 4—5—202; 68—11—1605; 68—11—1607.

**RULES
OF
TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY**

**CHAPTER 0720-13
RULES OF PROCEDURE FOR HEARING CONTESTED CASES**

TABLE OF CONTENTS

0720—13—.01	General Procedures for Contested Cases
0720—13—.02	Contested Cases Before Administrative Judges Sitting Alone
0720—13—.03	Agency Review of Initial Orders
0720—13—.04	Declaratory Orders

0720—13—.01 GENERAL PROCEDURES FOR CONTESTED CASES.

- (1) Except as otherwise provided herein, all contested cases before The Agency will be conducted in accordance with T.C.A. §§ 4—5—301 et seq., 68—11—1610, with these Rules, and with the Rules of the Secretary of State Chapter 1360—4—1.
- (2) Eligibility to appeal. Any person with legal standing, and who meets the requirements of T.C.A. § 68- 11—1610 may petition The Agency for a contested case hearing to appeal the grant or denial of a certificate of need.
- (3) Filing of petitions. Petitions for contested case hearings must be filed with The Agency in triplicate pursuant to Rule 0720-8-.01 of the Health Services and Development Agency, and must be received at The Agency offices within fifteen (15) days of the date of The Agency's meeting at which the action which is the subject of the petition took place. Simultaneous with filing, the petitioner shall serve copies of the petition on all other parties in the matter. The petitioner shall have the burden of proving, by a preponderance of the evidence, that a certificate of need should be granted or should be denied.
- (4) Intervention. Any person with legal standing and who meets the requirements of T.C.A. § 4—5—310 may file a petition for intervention in a contested case.

Authority: T.C.A. §§ 4—5—202; 4—5—223; 4—5—310; 4—5—314; 68—11—1605; 68—11—1610.

0720—13—.02 CONTESTED CASES BEFORE ADMINISTRATIVE JUDGES SITTING ALONE.

- (1) With the exception of declaratory orders referenced below, all petitions for a contested case hearing shall routinely be referred to the Administrative Procedures Division, Department of State for hearing by an Administrative Judge sitting alone on behalf of The Agency. The Agency retains the right, however, to hear any particular contested case on its own behalf.
- (2) In all cases, whether heard by an Administrative Judge sitting alone, or by the full Agency, the petitioner and other parties with the exception of The Agency shall bear the cost for all court reporters and transcriptions, and charges billed to the Agency for the Administrative Judge's work/time; in a contested case where the petition is dismissed, whether voluntarily or involuntarily, the petitioning party or parties shall be considered a "losing party" under TCA 68-11-1610. The original transcript and one copy of the transcript for each member of The Agency shall be provided to The Agency by the other parties, if the case is to be reviewed by the full Agency.
- (3) Unless agreed otherwise by the parties, at the beginning of all contested case hearings, Agency counsel shall provide a summary of what the case is about, description of the project, and introduce into evidence the application, the reviewing agency's report and the staff Summary, and the minutes of The Agency reflecting the action that was taken before The Agency. In no event shall this provision mean that The Agency is a neutral party in contested cases, or that its counsel represents the interests of any party other than The Agency.
- (4) In all cases, whether heard by an Administrative Judge sitting alone, or by the full Agency, the party petitioning for such hearing shall present its case first, unless the parties agree otherwise.

Authority: T.C.A §§ 4—5—202; 4—5—223; 4—5—310; 4—5—314; 68—11—1605; 68—11—1609; 68—11—1610.

0720—13—.03 AGENCY REVIEW OF INITIAL ORDERS.

- (1) An Initial Order issued by an Administrative Judge, sitting alone, may be reviewed by The Agency pursuant to T.C.A §§4-5-301, et seq., 68-11-1610, these Rules, and the Rules of the Secretary of State Chapter 1360-4-1. The Agency may, in its discretion, decline to exercise any review of an Initial Order issued by an Administrative Judge, in which event the Initial Order issued by an Administrative Judge shall become a Final Order as provided by the Administrative Procedures Act.
- (2) In such a review proceeding, The Agency's review is strictly limited to the record which was developed before the Administrative Judge. No additional evidence is to be received or considered by The Agency.
- (3) Such a review proceeding is in the nature of appellate review. Each party will be given the opportunity to file a brief which should specify what action the party maintains The Agency should take on the Initial Order. The Agency may place reasonable page limitations on such briefs.
- (4) In such a review proceeding, each party will normally be limited to oral argument of thirty (30) minutes in length, including rebuttal.
- (5) At the conclusion of the review proceeding The Agency may decide that the Initial Order should be adopted in its entirety, or it may make such modifications to the Initial Order as it deems appropriate.

- (a) Alternatively, The Agency may take the matter under advisement, and subsequently reconvene, after reasonable notice to the parties, to hold its public deliberations and to render a Final Order.

Authority: T.C.A. §§ 4—5—202; 4—5—223; 4—5—310; 4—5—314; 68—11—1605; 68—11—1610.

0720—13—.04 DECLARATORY ORDERS.

- (1) Any affected person may petition The Agency for a declaratory order, as provided in T.C.A. § 4—5—223, as to the interpretation, validity, or applicability of a statute or rule within the primary jurisdiction of The Agency. Such petition shall be filed with The Agency in triplicate, and must specifically identify the statute or rule at issue, and the nature of the ruling sought.
- (2) A petition for declaratory order is viewed as primarily involving questions of law and statutory or rule interpretation. The parties should strive to limit the amount of evidence presented, and to stipulate the facts to the extent possible.
- (3) In the event the petition for declaratory order arises out of The Agency's action on a specific project or issue, the petition for declaratory order shall be filed within thirty (30) days of the date of The Agency meeting at which the action at issue was taken.
- (4) No person may file a petition for declaratory order as to any action or issue which is the subject of a pending or completed contested case proceeding involving the same person.

Authority: T.C.A. §§ 4—5—202; 4—5—223; 4—5—310; 4—5—314; 68—11—1605; 68—11—1610.